

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMEL DALLUGE,

Plaintiff,

vs.

KIM NEWLAND,

Defendant.

NO. CV-06-363-RHW

ORDER DISMISSING FIRST AMENDED
COMPLAINT WITH PREJUDICE

1915(g)

BEFORE THE COURT is Plaintiff's First Amended Complaint (Ct. Rec. 8). Plaintiff, a prisoner at the Grant County Jail, is proceeding *pro se* and *in forma pauperis*; Defendant has not been served. After review of the First Amended Complaint the court finds it fails to cure the deficiencies of the initial complaint.

Plaintiff contends, while a pre-trial detainee, he was subjected to "cruel and unusual" punishment when Defendant Newland "trashed" his cell and removed items on November 8, 2005. Plaintiff seeks five million dollars in damages, a written apology, and other injunctive and declaratory relief. Plaintiff's allegations are insufficient to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915A(b)(1),(2) and 1915(e)(2).

A convicted inmate's challenge to the conditions of his confinement is evaluated under the Eighth Amendment, and a pretrial

1 detainee's challenge is evaluated under the Fourteenth Amendment.
2 *Redman v. County of San Diego*, 942 F.2d 1435, 1440 (9th Cir.)(en
3 banc), *cert. denied*, 502 U.S. 1074 (1992). Regardless, the Eighth
4 Amendment provides a minimum standard of care for determining a
5 person's right as a pretrial detainee. *Jones v. Johnson*, 781 F.2d 769,
6 771 (9th Cir. 1986).

7 Under the Eighth Amendment, the pertinent inquiry is (1) whether
8 the alleged violation constitutes an infliction of pain or a
9 deprivation of the basic human needs, such as adequate food, clothing,
10 shelter, sanitation, and medical care, and (2) if so, whether prison
11 officials acted with the requisite culpable intent such that the
12 infliction of pain is "unnecessary and wanton." *Farmer v. Brennan*,
13 511 U.S. 825, 834 (1994). In prison conditions cases, prison
14 officials act with the requisite culpable intent when they act with
15 deliberate indifference to the inmates' suffering. *Id.*; *Wilson v.*
16 *Seiter*, 501 U.S. 294, 302-03 (1991); *Jordan v. Gardner*, 986 F.2d 1521,
17 1528 (9th Cir. 1993)(en banc). Similarly, conditions of confinement
18 would constitute "punishment" in violation of the Fourteenth Amendment
19 only if jail officials act with deliberate indifference to the
20 inmates' needs. *Redman*, 942 F.2d at 1441-43.

21 The test for whether a prison official acts with deliberate
22 indifference is a subjective one: the official must "know[] of and
23 disregard[] an excessive risk to inmate health and safety; the
24 official must both be aware of the facts from which the inference
25 could be drawn that a substantial risk of serious harm exists, and he
26 must also draw the inference." *Farmer*, 511 U.S. at 837. Plaintiff's
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1 allegations against Defendant Newland do not rise to the level of an
2 Eighth Amendment violation.

3 Again, to the extent Plaintiff may be asserting he was deprived
4 of his property, he fails to state a cognizable claim. A claim of
5 negligent or intentional unauthorized deprivation of property by state
6 officials does not state a federal cause of action under § 1983 if the
7 plaintiff has an adequate post-deprivation state remedy. *Hudson v.*
8 *Palmer*, 468 U.S. 517, 533 (1984); *Parratt v. Taylor*, 451 U.S. 527, 544
9 (1981). Washington law provides that prisoners, who believe that
10 property of value belonging to them has been lost or damaged due to
11 staff negligence, may file a claim pursuant to RCW 4.92.100. See also
12 WAC 137-36-060. Therefore, Plaintiff's remedy for a jail official's
13 alleged negligent or intentional unauthorized acts is in state court.
14 Because Washington State provides Plaintiff an adequate post-
15 deprivation state remedy, his § 1983 personal property claim lacks an
16 arguable basis in law.

17 Finally, a prisoner may not bring a civil action for emotional or
18 mental injury that he suffered while in custody without showing a
19 physical injury. 42 U.S.C. § 1997e(e); *Oliver v. Keller*, 289 F.3d 623,
20 630 (9th Cir. 2002).

21 For the reasons set forth above and in the Order to Amend or
22 Voluntarily Dismiss Complaint, **IT IS ORDERED** the First Amended
23 Complaint is **DISMISSED with prejudice** for failure to state a claim
24 upon which relief may be granted. See 28 U.S.C. §§ 1915(e)(2) and
25 1915A(b)(1). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996,
26 a prisoner who brings three or more civil actions or appeals which are
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1 dismissed as frivolous or for failure to state a claim will be
2 precluded from bringing any other civil action or appeal *in forma*
3 *pauperis* "unless the prisoner is under imminent danger of serious
4 physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised to read
5 the new statutory provisions under 28 U.S.C. § 1915. This dismissal
6 of Plaintiff's complaint may count as one of the three dismissals
7 allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to
8 file future claims.

9 IT IS SO ORDERED. The District Court Executive is directed to
10 enter this Order, forward a copy to Plaintiff at his last known
11 address, enter judgment, and close the file. The District Court
12 Executive is further directed to forward a copy of this Order to the
13 Office of the Attorney General of Washington, Criminal Justice
14 Division.

15 DATED this 3rd day of May 2007.

16 S/ Robert H. Whaley

17 ROBERT H. WHALEY
18 CHIEF UNITED STATES DISTRICT JUDGE
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